

Received & Inspected

15181 State Route 58 Oberlin, OH 44074

JAN 29 2013

440.774.1051 440.986.6601 Fax 440.774.2144 www.lcjvs.com

FCC Mail Room

Robert Moore Lorain County JVS 15181 State Route 58 Oberlin, Ohio 44074 January 22, 2013

Marlene H. Dortch, Secretary Federal Communications Commission Office of the Scretary 445 12<sup>th</sup> Street, SW Washington, DC 20554

Dear Ms. Dortch:

I am writing to "Request a Review" (CC Docket NO. 02-6) on a decision rendered by USAC in regard to our request for internet service.

USAC denied our request because the language of our contract with our internet service provider states the contract is effective eight days before the allowable contract date.

The contract, however, wasn't signed and didn't take effect until three days after the allowable contract date.

I have included a copy of the appeals decision from USAC as well as a copy of the contract in question. The signatures and signed dates on the contract will show evidence that the contract wasn't signed and effective until after three days after the allowable contract date.

Thank You,

Robert Moore

**Technology Professional Services** 

Lorain County JVS

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Robert Moore Lorain County J V S D 15181 State Route 58 Oberlin, OH 44074-9753

Billed Entity Number: 129449 Form 471 Application Number: 863638 Form 486 Application Number:





# Universal Service Administrative Company

Schools & Libraries FCC Mail Room

## Administrator's Decision on Appeal – Funding Year 2012-2013

December 11, 2012

Robert Moore Lorain County J V S D 15181 State Route 58 Oberlin, OH 44074-9753

Re: Applicant Name: LORAIN COUNTY J V S D

Billed Entity Number: 129449
Form 471 Application Number: 863638
Funding Request Number(s): 2352411

Your Correspondence Dated: November 08, 2012

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2012 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

<u>Funding Request Number(s)</u>: 2352411 Decision on Appeal: **Denied** 

Explanation:

- According to our records, your FCC Form 470 (Application Number: 110970000914579) was posted on February 18, 2011. In your FCC Form 470 Receipt Notification Letter, USAC notified you that the earliest date upon which you, the applicant, could sign a contract for posted services was March 18, 2011. The contract that was included with your appeal was signed on March 10, 2011, which is before the Allowable Contract Date. Consequently, USAC denies your appeal because your application did not comply with the competitive bidding requirement that your FCC Form 470 be posted on the website for 28 days prior to your signing a contract for services.
- You selected your vendor for new products and/or services prior to the expiration of the 28 day posting period. FCC rules require that except under limited

circumstances, all FCC Forms 470 received be posted on the USAC website for 28 days, and that applicants carefully consider all bids received before selecting a vendor, entering into an agreement or signing a contract, and signing and submitting an FCC Form 471. See 47 C.F.R. secs. 54.503(b) and (c), 54.511(a) and (c). FCC rules further require that the Administrator send the applicant a confirmation when the FCC Form 470 has been posted, and inform the applicant of the earliest date upon which they may sign a contract with the vendor it selects. See 47 C.F.R. sec. 54.503(c)(4). These competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, FCC 97-246 para. 9 (rel. Jul. 10, 1997). New products and/or services include tariff Telecommunications services that are not subject to an existing, binding, written contract.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division Universal Service Administrative Company

## LAKE ERIE EDUCATIONAL COMPUTER ASSOCIATION SERVICE PROVIDER CONTRACT INTERNET SERVICE

This agreement for Internet Access service ("Agreement") is effective March 10, 2011 (date), between the Lake Eric Educational Computer Association ("Provider") and Lorain County JVS ("Customer").

WHEREAS, Provider is a regional educational center organized by the State of Ohio pursuant to Section 3301.075 of the Ohio Revised Code to provide communications and other technology services, and;

WHEREAS, the Customer is a School District or School certified for instruction by the State of Ohio, and;

WHEREAS, the Provider through its technology center desires to provide to Customer and Customer desires to purchase from Providers the services detailed in this Agreement;

NOW THEREFORE, in consideration of the following mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agrees as follows:

#### I. DEFINITIONS:

As used in this Agreement the following terms shall be defined as follows:

"Customer" shall mean a public or private school or school district that has agreed to the terms and conditions of this Agreement.

" Provider" shall mean the Lake Erie Educational Computer Association.

"Services" shall mean all of the duties and ministrations affirmatively checked in Article III of this Agreement.

"User" shall mean a school or person authorized by a school to make use of the data Services or Equipment secured by Customer from Provider by this Agreement.

## II. TERM AND RENEWAL

This Agreement shall be for the period beginning July 1, 2011 and ending June 30, 2016.

## II. PERFORMANCE

Provider shall furnish Customer unbundled Internet access services as further described in attached Exhibit A.

## IV. CHARGES AND PAYMENT

Customer agrees to be solely responsible to Provider for all charges billed by Provider pursuant to this Agreement. Charges for the Services provided under this Agreement are set forth on Schedule 1 of attached Exhibit A. Charges will be billed on an *annual* basis.

Payment of all invoices shall be due within thirty (30) days of the mailing date reflected on the receipt invoice. Late payments shall be subject to a service charge of one and one half percent (1 1/2%) of any unpaid monthly balance unless expressly waived by Provider in writing. Provider may, at its sole discretion, terminate or suspend service to Customer if payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights Provider may have. If service is suspended, a reconnection fee to cover the administrative cost of reconnection may be charged. Any reconnection charge shall be in addition to amounts due for unpaid balances and the above described service charges.

## V. FAILURE TO APPROPRIATE OR PAY FUNDS

In the event that Customer fails to appropriate sufficient funds, or to pay any or all obligations under this agreement as when due, then Customer agrees to pay the following charges:

- A.. The contracted annual amount in full for the balance of the current fiscal year (July 1 June 30), less the amount already paid by Customer for such fiscal year.
- B. One hundred percent (100%) of the monthly telecommunications cost charged by the telecommunications provider under its contract with Provider for the delivery of the necessary Bandwidth required for the delivery of the Services under this Agreement.

## VI. WARRANTIES AND LIMITATIONS ON LIABILITY

- A. Provider shall be liable to Customer for failure to provide Services only if such failure is due to the negligence of Provider unless: 1) Damages are incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or users; or 2) Provider's failure to perform is caused by acts of God, winds, fires, landslide, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, rlots, or civil disturbances, failure of a utility or utility type service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.
- B. Customer may only utilize Services for educational activities and educational administrative related activities only. Provider does not warrant that the functions of the Internet will meet any specific Customer or user requirements, or that Internet access Services provided will be error free or uninterrupted; nor shall Provider be liable for any actual damages or any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its users. Further, Customer understands and agrees that Provider will exercise no control over the information that Customer and users may transmit and access as a result of the provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the Internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Customer acknowledges that some material contained in the Internet may be inappropriate for school aged pupils. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems.
- C. Customer, directly or through its agents, permitting pupil access to the interconnected computer system(s) of the Internet through Provider assumes full responsibility for any and all access to and usage of information contained on the interconnected computer system(s) of the Internet.
- D. Provider reserves the right to discontinue Customer's access to the Provider's Service and/or seek other legal or equitable relief for use of the Services that Provider deems to be in violation of the rules and regulations of the Ohio State Board of Education; in violation of this Agreement; or in violation of state and federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes, but is not limited to:

  1) knowingly transmitting offensive or harassing statements; 2) developing and/or transmitting offensive or unlawful graphics; 3) knowingly transmitting sexual or ethnic slurs explicitly or as part of a joke; 4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or 5) knowingly permitting or encouraging unauthorized access to the Providers network and public networks including access to the Internet.
- E. Customer understands and agrees that Provider shall have no responsibility for Customer's or its users' accessing or transmitting offensive or unlawful information, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.

F. Although Provider does not have a duty to monitor Customer or its Users' transmissions, it shall not be prohibited from monitoring.

## VII. PROPERTY

A. All rights to written procedures and similar items utilized or developed in connection with this Agreement, reside solely with Provider.

## VIII. CONFIDENTIALITY OF INFORMATION

- A. Provider shall exercise ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer.
- B. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.
- C. Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

## IX. NOTICES

- A. All notices permitted or required under this Agreement shall be in writing and shall be deemed given or delivered when received. Notices sent by mail must be sent in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):
  - 1. If to Provider:

Name: Lake Brie Educational Computer Association

Address: 1885 Lake Avenue City/State/Zip: Blyria, OH 44035

Phone: 440-324-3185 Facsimile: 440-324-7355

2. If to Customer:

Name:	
Address:	
City/State/Zip:	
Phone:	
Facsimile:	
E-mail:	

## X. GENERAL PROVISIONS

 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

- b. Modification, Waiver, Discharge, etc. This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall in not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, the term of any purchase order, invoice or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.
- c. Captions. The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.
- d. Rights of Persons Not Parties. Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
- e. Severability. If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- f. Entire Agreement. This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.
- g. Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- h. Construction. This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.
- i. Compliance with Law. Each party agrees to comply with all governmental laws and regulations applicable to the Services contemplated by this Agreement. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.
- j. Fully Understand and Freely Enter. The undersigned hereby acknowledge that they have read and understand the foregoing. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

JAN 29 2013

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By signing below, Signatory of Customer ("Signatory") certifies authorization to sign on behalf of and legally bind Customer and certifies having read, understood and agreed to the terms of this Agreement, including the provisions of the attached exhibits which are hereby incorporated herein by reference. Signatory certifies that all information provided by Customer in connection with this Agreement is true and accurate. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; if Customer is another educational entity, Signatory certifies that the Agreement has been approved by formal action of its Board.

IN WITNESS WHEREOF, this agreement has been executed by the parties.

CUSTOMER:	•
LOIAM County JUS	
Printed name of Customer	
KATHIYN KNPS Printed name of Board President	Signature of Board President Date
Con Hompson Printed name of Treasurer	3/10/11
Printed name of Treasurer	Signature of Treasurer Date
Jolfn NolAn	3/10/11
Printed name of Superintendent	Signature of Superintendent Date
PROVIDER:	
Lake Erie Educational Computer Association Printed name of Provider	
Livined name of Ligarder	
Lloyd Wright	3/2/11
Printed name of Executive Director	Signature of Executive Director Date
Judy Maldenado	Judy Maldonado 3-21-11
Printed name of ESC Board President	Signature of ESC Board President Date
Jill Orseno	Vill Oppins 3-21-11
Printed name of Treasurer	Stenature of Treasurer Date

#### EXHIBIT A

#### INTERNET ACCESS SERVICES

This exhibit is hereby made part of the Internet Access Services Agreement (the "Agreement") entered between the Lake Erie Educational Computer Association and, Customer, as these terms are defined in the Agreement. The following additional terms and conditions apply to the Agreement.

Charges will be incurred for only those Services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below. Any additional services will be billed monthly as incurred.

## 1. Services

The Services provided and their attendant costs are set forth on Schedule 1 attached hereto and incorporated herein by reference.

#### 2. Additional Charges

Customer agrees to pay for any installation costs resulting from the provision of Services to Customer.

## 3. Lake Eric Educational Computer Association Obligations

- a) Provider will provide technical training of Customer's technicians on connecting to and activating Service.
- b) Provider will plan and coordinate all activities incidental to the implementation of the Internet access connection.
- c) Provider will assume all responsibilities for the physical Internet access system up to and including the router included in any Internet access connection. Provider is not responsible for any systems, computers, devices or networks connected to the Provider's routing device,

#### 4. Customer's Obligations

- a) Customer will assume all responsibilities for all systems, computers, devices, or networks connected to the Provider's routing device.
- b) Customer will provide surge suppression for all devices either directly or indirectly connected to the Internet access connection. The surge suppression must meet ULI449 rating.
- c) Customer will make its personnel and records available to the extent necessary to facilitate the planning, training and installation of the Service.
- d) Customer will provide the Lake Erie Educational Computer Association with appropriate and sufficient space and electrical power to properly facilitate the Internet Access Service
- c) Customer agrees not to connect any of its local area networks to alternative Internet service
  providers without the prior approval of the Lake Erie Educational Computer Association.
- f) Customer agrees not to resell any Service provided by Provider, nor will it allow any other organization to receive or utilize program services via direct or indirect connection to Customer network unless specifically authorized by Provider.

## EXHIBIT A - SCHEDULE 1

## **INTERNET ACCESS SERVICES FEES**

The Lake Erie Educational Computer Association shall provide the following services to the Customer for the fee listed below:

100Mb Internet Access: \$6.00 per student per year based on October EMIS count week ADM from previous year plus \$15600 transport to District per year \$0 estimated installation cost

Yearly fee shall be based on a fiscal year commencing July 1 and ending June 30 the following calendar year

ADM (Average Daily Membership) component will be re-calculated each year based on the October EMIS count week ADM from prior year

ADM component may be adjusted on an annual basis not to exceed 25% per year

LEECA reserves the right to institute an Internet usage surcharge during the term of this contract

Transport contingent on vendor acceptance of final LRECA contract terms

Transport cost may be contingent on district participation levels

Installation costs, if quoted, are estimated. Install fee will be invoiced once installation is complete

T1/ 1.544Mbps transport, if quoted, is based on the existing SOMACS contract set to expire June 30, 2011. T1 costs will be adjusted as required once available

JAN 29 2013

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- g) Customer will make all reasonable attempts to protect devices serviced by this program from viruses, spy-ware, or any other malicious software, as well as from hacking activities and any other non-authorized or destructive use, which may impact the Lake Brie Educational Computer Association or other program participants. The Lake Brie Educational Computer Association may restrict or disable Customer access if deemed necessary to protect the Lake Brie Educational Computer Association or other program participants.
- h) Customer acknowledges that unauthorized reproduction of copyrighted computer software or other electronic resources may be a violation of Federal copyright law and of Ohio criminal law, which also applies to other unauthorized use of computer facilities, services, programs or data, and provides for punishment by substantial fines and/or imprisonment. The Lake Brie Educational Computer Association and the Council support these laws and encourage member educational entities, staff members, and students to fully comply with all such laws. Potential violations that come to the attention of the staff of the Lake Brie Educational Computer Association will be investigated, and if substantiated, the educational entity will be required to fully comply with all applicable laws. If Customer does not fully comply with all applicable laws, the matter will be referred to the General Assembly of the Lake Brie Educational Computer Association for disciplinary action. Such action would occur at the direction of the Board of Directors or General Assembly of the Lake Brie Educational Computer Association and could result in the disqualification of Customer from all programs of the Lake Brie Educational Computer Association.
- Customer will adhere to all state conditions and rules as specified by the Ohio K12 Network Committee, known as the late ONEnet committee.

Lake Erie Educational Computer Association:

CUSTOMER:

| Comparison | Compa